

Title 14 Board of Forestry and Fire Protection

[Notice circulated April 19, 2002]

15-DAY NOTICE
OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS
AND PUBLIC HEARING

Interim Watershed Mitigation Addendum - 2001

PUBLIC HEARING

Pursuant to the requirements of Government Code § 11346.8(c), and Title 1 of the California Code of Regulations § 44; the Board of Forestry and Fire Protection (Board) is providing notice of changes made to proposed regulations listed below which were the subject of a regulatory hearing October 11, 2001. These changes are being proposed in response to comments received regarding the proposed changes to the Forest Practice Rules. The Board will hold a public hearing to adopt final rule language. The public hearing is to be held 9:30 a.m. on Thursday, May 9, 2002, at the Radisson Hotel and Conference Center, 2233 Ventura Street, Fresno, California. The Board is providing notice of changes made to proposed regulations affecting Title 14 of the California Code of Regulations (14 CCR) Sections:

§§ 895 Abbreviations Applicable throughout the Chapter

§§ 895.1 Definitions Applicable throughout the Chapter

§§ 916.13(936.13, 956.13) Interim Watershed Mitigation Amendment (IWMA)

§§ 916.13.1(936.13.1, 956.13.1) Consultation

§§ 916.13.2(936.13.2, 956.13.2) IWMA Evaluation

§§ 916.13.3(936.13.3, 956.13.3) Contents of IWMA

§§ 916.13.4(936.13.4, 956.13.4) Standards for IWMA Preparation

§§ 916.13.5(936.13.5, 956.13.5) Submission of an IWMA as Part of a Plan

§§ 916.13.6(936.13.6, 956.13.6) Compliance Monitoring and Expanded Completion Report §§

916.13.7(936.13.7, 956.13.7) Subsequent Plans Within the IWMA Area

§§ 916.13.8(936.13.8, 956.13.8) Equivalent Analysis

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the 15 Day Notice. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements.

Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed action described in the 15 Day Notice to the Board. The written comment period ends at 12:00 noon, on Monday, May 6, 2002. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: James L. Mote
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

UPDATED INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

- All sections revised to show new expiration date of 12/31/2003
- Changes made to § 895 Abbreviations Applicable throughout the Chapter
Repetitive language removed and regulation expiration date changed. No impact to regulated

community or agencies involved.

- Changes made to **§ 895.1 Definitions Applicable throughout the Chapter**
The definition of “watercourse order” was added to this section to improve clarity of the regulation. Repetitive language removed. Language stating expiration date revised to be consistent with other rule sections. No impact to regulated community or agencies involved.
- Changes made to **§§ 916.13(936.13, 956.13) Interim Watershed Mitigation Amendment (IWMA)**
No changes made except expiration date.
- Changes made to **§§ 916.13.1(936.13.1, 956.13.1) Consultation**
A clarifying statement was inserted identifying when consultation would take place. No other changes made except expiration date.
- Change made to **§§ 916.13.2(936.13.2, 956.13.2) IWMA Evaluation**
The definition of the lower limit of the IWMA evaluation area was revised for clarity. The Calwater 2.2 document (CALWATER: A STANDARDIZED SET OF CALIFORNIA WATERSHEDS – revised 07/06/94) was identified and included by reference. No other changes made except expiration date.
- Changes made to **§§ 916.13.3(936.13.3, 956.13.3) Contents of IWMA**
The language was revised to improve clarity and remove repetitive language. . The statement regarding determinations was clarified. Rule section symbols were inserted for clarity. No other changes made except expiration date.
- Changes made to **§§ 916.13.4(936.13.4, 956.13.4) Standards for IWMA Preparation**
The language was revised to reduce redundancy. No other changes made except expiration date.
- Changes made to **§§ 916.13.5(936.13.5, 956.13.5) Submission of an IWMA as Part of a Plan**
The language was revised to correct grammatical errors. No other changes made except expiration date.
- Changes made to **§§ 916.13.6(936.13.6, 956.13.6) Compliance Monitoring and Expanded Completion Report**
No changes made except expiration date.
- Changes made to **§§ 916.13.7(936.13.7, 956.13.7) Subsequent Plans Within the IWMA Area**
No changes made except expiration date.

- Changes made to §§ 916.13.8(936.13.8, 956.13.8) **Equivalent Analysis**
The language was revised to clarify intent. No other changes made except expiration date.

AMENDED INITIAL STATEMENT OF REASONS

§§ 916.13 [936.13, 956.13] Interim Watershed Mitigation Amendment (IWMA)

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

In previous rule making actions the Board adopted *Watershed Protection 2000* rules, which set forth, regulations for the protection of watercourses designated as having impaired water quality values. The Board extended these rules with minor modifications as the *Watershed Protection 2001* rules. The *Interim Watershed Mitigation Addendum 2001* rules being proposed are intended to move from a project by project analysis of impacts and mitigation development to a watershed level approach. The *Watershed Protection 2001* rules are currently being proposed to be extended to December 31, 2003. The Board has developed the proposed *Interim Watershed Mitigation Addendum 2001* rules to continue towards the provision of watershed level evaluation. The *Interim Watershed Mitigation Addendum Rules* are to apply statewide. They are an initial pilot test of watershed level evaluation, targeted at the maintenance and restoration of anadromous salmonids.

Several species of anadromous salmonids (Chinook salmon, steelhead and Coho salmon) have been listed throughout their range in California under either the federal or California Endangered Species Acts since December 1995. Since the listings, the Board has adopted several rule packages that provide generic protective measures for anadromous salmonids across their entire range.

The Board recognizes that it is beneficial for both anadromous salmonids and timberland owners to focus on site-specific factors that affect freshwater habitat for anadromous salmonids. Furthermore, the Board recognizes that it may be desirable to address these factors in a broader context than individual harvest plans.

- The IWMA rule package provides a regulatory process that allows the Department of Forestry and Fire Protection (Department), other responsible agencies, and timberland owners to identify site-specific conditions that are impacting anadromous salmonids within the broader context of a logical hydrologic unit.
- The IWMA rule package promotes consultation between the responsible agencies, and the timberland owner to address specific limiting factors for anadromous salmonids within the evaluation area prior to the development and review of individual harvest plan proposals.

- The IWMA rule package provides timberland owners with an option to the existing generic forest practice rules, that focuses harvest plan and mitigation design on site-specific factors limiting anadromous salmonids within the evaluation area.
- The IWMA rule package provides an opportunity for the Department, other responsible agencies, and timberland owners to conduct a pilot test on the feasibility of voluntary approach to watershed evaluation.

SPECIFIC PURPOSE OF THE REGULATION

The IWMA is provided as an alternative to compliance with the prescriptive rules adopted for the protection of watersheds with impaired water quality. The purpose of the IWMA is a focusing on watershed evaluation and the development of site-specific mitigation for limiting factors for anadromous salmonids. It is made clear that practices proposed in the IWMA must provide for the protection of anadromous salmonids.

NECESSITY

A vehicle is needed to provide for a performance-based standard to address timber-harvesting impacts on anadromous salmonids. The prescriptive standards, which are currently in place, provide a floor of protection based on the best available professional judgement and science presented to the Board. However, they do not take into account statewide variables and are not necessarily the answer for all situations encountered during timber harvesting. The proposal is necessary to better define the limiting factors on anadromous salmonids and site specific measures to minimize resulting impacts. This regulation also provides a means of addressing impacts at a watershed level rather than at a project level. Thus, protection is provided at a much larger planning scale.

Subsections §§ 916.13 [936.13, 956.13](a) are necessary to improve the habitat for salmonids by identifying the factors that limit each phase of their life cycle must be identified. Those factors which may be induced by timber harvesting must be singled out and plans developed to conduct timber operations in a manner to reduce the potential for those impacts.

Subsections §§ 916.13 [936.13, 956.13](b) are needed to be certain that watershed conditions which may result in a limiting factor, such as sediment being introduced into a watercourse, are identified. This allows operational practices to be designed which will lead to maintenance or improvement of watershed conditions, such as road management schedules and practices.

Subsections §§ 916.13 [936.13, 956.13](c) are needed to ensure that the identified potential impacts are addressed on a site specific basis, rather than utilizing a prescriptive rule which may not result in the intended protection.

Subsections §§ 916.13 [936.13, 956.13](d) provide a means of assuring that mitigations agreed to in a THP have been implemented within the project. This also provides the compliance monitoring mandated under the California Environmental Quality Act.

Subsections §§ 916.13 [936.13, 956.13](e) provide the sunset date as this regulation is meant to be a pilot for the Board to evaluate means of addressing timber harvesting at a watershed level. Project by project evaluation does not adequately address landscape level considerations.

§§ 916.13.2 [936.13.2, 956.13.2] IWMA Evaluation Area

Necessity

A common understanding of the area to be evaluated for the limiting factors for anadromous salmonids must be set. Otherwise the expectation of the parties for information is not consistent and can result in avoidable conflict.

Subsections §§ 916.13.2 [936.13.2, 956.13.2](a) are necessary to set the lower level of size for a IWMA evaluation area. Watershed level planning should address an area large enough to consider impacts which will occur through the implementation of several THPs at one time.

Subsections §§ 916.13.2 [936.13.2, 956.13.2](b) are necessary to set the upper limit of the IWMA evaluation area. Planning at too large a level can dilute the effectiveness of mitigations to be implemented on a number of THPs. Mitigations design may not be effective for all conditions within the planning area if it is too large. Changes in watercourse morphology, soils, timber types and other factors may dictate differing site specific mitigation design.

§§ 916.13.6 [936.13.6, 956.13.6] IWMA Compliance and Monitoring and Expanded Completion Report.

Necessity

The expanded completion report is needed to assist in compliance monitoring. That is to assure the landowner has accomplished what was stated in the THP/IWMA. It is then necessary to determine if the agreed upon (Director and THP submitter) mitigation achieved the reduction of limiting factors for anadromous salmonids as anticipated. This is necessary for utilization of the adaptive management approach used in this proposal. It is critical that the Director and landowners learn from success or failure and that information is utilized in designing future timber harvesting projects. The one year time for submittal is to assure timeliness of verification of compliance within the statutes of limitations for forest practice violations. Also, an inspection conducted after mitigations have been in place over a winter period allows for an effectiveness evaluation. The results of an effectiveness evaluation will be

used as information in designing future site specific mitigations.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: James L. Mote
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418

The designated backup person in the event Mr. Mote is not available is Daniel Sendek, Executive Officer of the Board of Forestry and Fire Protection. His phone and fax numbers are:

(916) 653-8007
Fax: (916) 653-0989

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

A copy of the express terms of the proposed regulation is available on request.

A copy of the express terms of the proposed regulation is also available on the Board of Forestry and Fire Protection web page:

http://www.fire.ca.gov/bof/board/board_proposed_rule_packages.html.

Additionally, all the information considered as the basis for this proposed regulation (i.e., rulemaking file) is available to the public at the Board's office listed above.

TEXT OF MODIFIED REGULATIONS

In order to clearly indicate those sections proposed for change in this 15-day notice, the text is presented in the following format:

The Board has illustrated changes to the original text in the following manner:

- language originally proposed is UNDERLINED
- additions to the originally proposed language is DOUBLE-UNDERLINED
- deletions to the originally proposed language is ~~SINGLE STRIKEOUT~~

James L. Mote
Regulations Coordinator
Board of Forestry and Fire Protection